

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Hill Country Real Estate Development Corp.
Owner of Antenna Structure #1061297 in
Junction, Texas
Chevy Chase, Maryland

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File Number EB-02-DL-078
NAL/Acct.No. 200232500008
FRN #0006-7409-14

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: September 30, 2002

By the Enforcement Bureau, Dallas Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Hill Country Real Estate Development Corporation (“Hill Country”), owner of antenna structure #1061297, apparently liable for a forfeiture in the amount of thirteen thousand dollars (\$13,000) for willful and repeated violations of Sections 17.50, 17.51, and 17.57 of the Commission’s Rules (“Rules”).¹ Specifically, we find Hill Country Real Estate Development Corporation apparently liable for failure to repaint the structure as often as necessary to maintain good visibility, failure to exhibit required obstruction lighting, and failure to notify the Commission of change in ownership information.

II. BACKGROUND

2. On February 15, 2002, Greg Albritton, a representative of Hill Country, stated that Hill Country’s antenna structure #1061297 was poorly painted and the lights were not functioning. Furthermore, he stated that approximately four months earlier, Hill Country had attempted to refurbish the structure, but had mistakenly repainted and replaced lights on an adjacent tower not owned by Hill Country. Reports from the Federal Aviation Administration (“FAA”) to the Commission’s Dallas Field Office (“Dallas Office”) showed no evidence that a report of a light outage for this structure had been made to the FAA. In addition, the Commission’s Antenna Structure Registration (“ASR”) database listed the previous owner, and not Hill Country, as the registered owner of this structure.

3. On April 2, 2002, the Dallas Office issued a Notice of Violation to Hill Country Real Estate Development Corporation for failure to notify the FAA upon determining that all flashing obstruction lights were not operating on antenna structure #1061297, failure to repaint the structure as often as necessary to maintain good visibility, failure to replace or repair structure lights, and failure to notify the Commission upon any change in ownership information. Hill Country responded to this Notice of Violation on April 22, 2002, stating in part: “Upon its purchase of the tower, Hill required [the previous

¹ 47 C.F.R. §§ 17.50, 17.51, & 17.57.

owner] to remove the repeater equipment within 30 days of the date of purchase agreement. The equipment removal left the tower standing 199 feet tall, thus removing the tower from the purview of the Commission's lighting and marking requirements. A TOWAIR determination performed on the Commission's web site indicates this structure, at its actual height of 199 feet, does not require registration [and thus did not require painting or lighting or notification to the FAA]. Thus, Hill did not violate [the quoted sections of the Commission's Rules].” This response included a printout of Hill Country's referenced TOWAIR Determination Results indicating that Hill Country had incorrectly entered the ground elevation above mean sea level as “NaN” or zero meters above mean sea level. In addition, Hill Country stated that they purchased the structure on April 30, 2001. A bill of sale obtained from the previous owner showed Hill Country purchased the tower on March 16, 2001. The FCC's ASR database showed that Hill Country notified the Commission of the ownership change on March 20, 2002.

4. On May 29, 2002, an agent from the Dallas Office inspected Hill Country's antenna structure # 1061297. The structure was rusty orange over its entire length with no paint banding visible. At 9:15 PM CST, the agent observed that all lights on the tower structure were inoperative.

5. On June 10, 2002, the Dallas Office received a follow-up response from Hill Country stating they had requested an FAA Determination of “No Hazard” and that an FAA Determination issued on May 6, 2002 stated that the structure did not present a hazard to air navigation provided that the structure be marked and/or lighted in accordance with FAA Advisory Circular 70/7460-1K, Obstruction Marking and Lighting, Chapter 3 (Marked), 4, 5 (Red), & 12. Hill Country stated in this response: “Pursuant to the FAA's Determination, Hill has commenced the process of having the Tower marked and lighted.” Subsequent correspondence from Hill Country indicated that the tower was properly lit as of June 28, 2002 and properly marked on or about July 6, 2002.

III. DISCUSSION

6. Section 17.50 of the Rules requires antenna structures requiring painting under this part to be cleaned or repainted as often as necessary to maintain good visibility. Section 17.51 of the Rules requires that red obstruction lighting be exhibited from sunset to sunrise. Hill Country's antenna structure #1061297 was required to be painted and lighted as prescribed in the structure's FAA Determination of “No Hazard” and the FCC Antenna Structure Registration.² These requirements were in effect prior to Hill Country reducing the structure height. Hill Country claimed that the reduction in the structure height to 199 feet removed the painting and lighting requirements for the structure. The reduction in the structure height to 199 feet did not alter the structure's painting and lighting requirements as confirmed by the FAA Determination issued on May 6, 2002. Even after the May 6, 2002, FAA Determination, Hill Country did not repaint and did not repair the lights on the structure until on or about July 6, 2002, and June 28, 2002, respectively. Therefore, from at least February 15, 2002, until on or about July 6, 2002, Hill Country failed to maintain good visibility of the structure's required obstruction markings. From at least February 15, 2002, until on or about June 28, 2002, Hill Country failed to exhibit the required obstruction lights. In addition, Hill Country failed to report the light outage to the FAA.³

7. Section 17.57 of the Rules requires the owner of an antenna structure for which an Antenna Structure Registration Number has been obtained to immediately notify the Commission upon any change

² The FAA's painting and lighting recommendations set forth on the structure's FAA determination of “no hazard” are mandatory. *See* 47 C.F.R. § 17.23.

³ *See* 47 C.F.R. § 17.57.

in ownership information. From the date of purchase of the antenna supporting structure on March 16, 2001 until March 20, 2002, Hill Country did not notify the Commission of the change in ownership information.

8. Based on the evidence before us, we find Hill Country Real Estate Development Corporation repeatedly⁴ and willfully⁵ violated Sections 17.50, 17.51 and 17.57 of the Rules by failing to repaint the structure as often as necessary to maintain good visibility, failing to exhibit required obstruction lighting, and failing to notify the Commission upon any change in ownership information.

9. Pursuant to Section 1.80(b)(4) of the Commission's Rules,⁶ the base forfeiture amount for failure to file required forms or information, such as the required notification to the FCC of changes in ownership information, is \$3,000, and the base forfeiture amount for failure to comply with prescribed lighting and/or marking specifications is \$10,000. Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), requires us to take into account "... the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require."⁷ Considering the entire record, and applying the statutory factors listed above, this case warrants a \$13,000 forfeiture.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁸ and Sections 0.111, 0.311 and 1.80 of the Rules,⁹ Hill Country Real Estate Development Corporation is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of thirteen thousand dollars (\$13,000) for willful and repeated violation of Sections 17.50, 17.51 and 17.57 of the Rules by failing to repaint the structure as often as necessary to maintain good visibility, failing to exhibit required obstruction lighting, and failing to notify the Commission upon any change in ownership information.

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NAL, Hill Country Real Estate Development Corporation SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full

⁴ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁵ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁶ 47 C.F.R. § 1.80(b)(4).

⁷ 47 U.S.C. § 503 (b)(2)(D).

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80.

amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

13. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. referenced above.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Hill Country Real Estate Development Corporation, 5454 Wisconsin Ave., Suite 720, Chevy Chase, MD 20815.

FEDERAL COMMUNICATIONS COMMISSION

James D. Wells
District Director, Dallas Office
Enforcement Bureau

¹⁰ See 47 C.F.R. § 1.1914.